

**MINUTES  
BOARD OF ADJUSTMENT  
THURSDAY, AUGUST 23, 2012  
HOOD ROOM, MATTHEWS TOWN HALL**

**PRESENT:** Chairman Eric Welsh, Vice Chairman Stephen Lee, Members Jim Mortimer and Walter Monestere; Alternate Members Jim Jiles, Jeanne Moore and Cecil Sumners; Attorney Robert Blythe; Planner Jim King and Zoning Technician/Deputy Town Clerk Lori Canapinno

**ABSENT:** Member Derek Morgan

**CALL TO ORDER/INVOCATION**

Chairman Welsh called the meeting to order at 7:00 pm and gave the invocation.

**APPROVAL OF THE MINUTES**

Mr. Monestere made a motion to approve the minutes of the August 2, 2012 meeting. Vice Chairman Lee seconded and the motion was unanimously approved.

**VARIANCE REQUEST: Case 2012-9; Renfrow Property, 400 West John Street (Continued from August 2, 2012)**

Alternate Members Jim Jiles and Jeanne Moore, who were in attendance at the previous meeting during which this case was opened, were appointed to act as voting members.

**SWEARING IN**

The following were sworn in: Jim King, David Blackley

Mr. King explained this case was continued from the previous meeting to allow time for the applicant to obtain specific information that was requested by the Board. He summarized the request as follows: the property, collectively known as 400 West John Street, was originally comprised of contiguous parcels. It was subdivided over time to create three parcels. In 2007, the Town constructed Charles Street which ran through the property and created another division. The property now consists of five separate parcels: 193-251-23, 193-251-24, 13-251-40, 193-251-22 and 193-251-41.

At the last meeting some questions were raised regarding the adjacent properties. Mr. King confirmed that none of them contained restrictions or requirements regarding fencing. There is no specified fence for any of those properties adjacent to the subject property.

The proposed fence parallel to the railroad tracks contain portions that would be located outside of the required front setback and required yard. Pursuant to the Zoning Ordinance, if a fence is located outside of these required setbacks and yard then no height restriction may be imposed. These means that a variance is required for portions of the proposed fence but not the fence in its entirety. The segments of the property requiring the

variance are those that front Charles Street, the segment of one of the parcels along West John Street and the segments that run in the side yards.

The property is zoned residential and the Zoning Ordinance does not require any type of visual screening on residential properties. The surrounding properties are commercial and industrial in nature, and if they are developed or re-developed they would be required to install a ten to twenty-foot deep visual screening buffer.

Mr. King noted that the Town's cross-section depiction of West Charles Street calls for a sidewalk on one side with only curb and gutter on the opposing side closest to the railroad tracks.

If the applicant ever chose to rezone the property and use it for commercial use, he would be required to plant street trees along Charles Street. Mr. King displayed a not-to-scale conceptual drawing (conceptual landscaping drawing as referenced in the staff report) of what future street trees might look like to give the Board the understanding of what they could look like. He also displayed photographs he took today (Exhibit #1 hereby referenced and made a part of these minutes) of the new plantings that the applicant installed after the previous hearing. Three street trees were planted along the northern edge of the right of way, fifty feet off center. He also completed the plantings on the opposite side of the road along the back portion of the property where his daughter lives.

The applicant indicated today that he was informed by Matthews' Landscape Manager Ralph Ramseur that a sewer easement runs along Charles Street on the curb and gutter side and nothing can be planting on top of it. Because of that restriction, the applicant moved the plantings back a few feet, which will push the proposed fencing to approximately sixteen feet off the back off the right of way.

Mr. Blackley addressed the Board. He explained that the plantings discussed at the previous meeting have been done and additional hollies were planted in a continuation of the screening across the street. The photos show the three new plantings on one side of Charles Street which are tea olive shrubs, and a magnolia and multiple Nellie Stevens hollies on the opposite side of the street. They are evergreens and are standard long term landscape plants. There will be additional plantings once the beds are prepared between the street and the fence.

## **DELIBERATIONS**

Vice Chairman Lee noted that the plantings don't offer the same screening that would be required of other uses but said he was fine with it. The location of the fence further back from the street on one side is helpful. He said the applicant's proposed mitigation efforts are a good compromise.

Chairman Welsh made a motion to approve the variance subject to two conditions: that the property continues to be used principally for agricultural purposes and that the plantings continue in substantially the same number and location. Mr. Jiles seconded and the motion was unanimously approved.

Chairman Welsh read the findings of fact. From what was heard at both meetings, there are difficulties with the property being used as a farm operation due to invasive deer. The hardship does run with the land, particularly due to the close proximity of the railroad right of way which deer commonly use for travel. This is not due to the applicant's own actions – in fact, the applicant has tried very hard to keep deer out but those efforts have not worked to date, thus prompting this request. The compromises the applicant has agreed to will be in harmony with the purpose and intent of the ordinance while allowing the applicant to continue his operations which are also beneficial to the town and are reflective of some of the concerns expressed by members of this Board. The location of the fence will be consistent with the safety and welfare of the public. This variance will also create

uniformity by allowing the fencing to be consistent with what is allowed in other portions of the property which are not subject to these fence height restrictions. There was also evidence presented that the variance is in order due to the minimum height required to keep deer out. The applicant's shorter fences were not successful in keeping the deer out and the applicant presented testimony that the fencing he will use is appropriate for this purpose.

**VARIANCE REQUEST: Case 2012-8; 7-11, 1700 Windsor Square Drive**

Chairman Welsh noted that Regular Member Jim Mortimer would be a voting member and appointed Alternate Member Cecil Sumners to also act as a voting member for this case.

**SWEARING IN**

The following were sworn in: Dean Privette, Adnan Jazairi

Mr. King explained that the property is located at 1700 Windsor Square Drive; parcel number 193-302-03. The applicant is 7-11/Sam's Mart. The request is for a variance to the transitional setback requirements, similar to a request that was heard by the Board in June.

The applicant seeks a variance of thirty feet to the transitional setback requirements to allow for the construction of an addition to the existing structure. Granting the variance will allow the applicant to construct the addition ten feet off transitional right of way.

The current right of way for Highway 74 is one hundred feet off the center line. The transitional right of way is a reservation of property and is comprised of another seventy five feet in addition to the existing platted right of way. The property was developed as a convenience store in the 1980s. The transitional right of way and transitional setback requirements were established in 2000 – years after the structure was built. The owner would like to renovate the existing structure and increase its square footage. The property is currently in the rezoning process to update its zoning from Conditional to B-2(CD). The Board of Commissioners cannot render a decision on the rezoning action unless the property is in compliance with the Zoning Ordinance, which prompted this variance request. The rezoning action is scheduled for decision on September 10.

The current structure is 950 square feet and the owner intends to increase that to 1,900 square feet, enlarge the canopy and relocate one of the fuel islands. The existing building, along with many others along this portion of East Independence Boulevard, is located partially within the transitional setback. The addition will be a lateral addition to the existing structure and will not increase the nonconformity.

In addition to the transitional right of way and transitional setbacks, there are two other issues that require variances. Mr. King explained each of the requested variances. The first is a variance to section 153.095; *Requirements for Lots on Thoroughfares*, which reads: "The minimum yard or setbacks prescribed for each zoning district which abuts a proposed but not yet constructed thoroughfare, shall be measured from the proposed right-of-way line established for each classification of thoroughfare as designated on the Thoroughfare Plan." The request is for a thirty foot variance from the required forty foot transitional setback to allow for portions of the building expansion to be located within the transitional setback.

The second is a variance to section 153.222(C)(1); *Renovation and Expansion of Nonconforming Structures Prohibited*, which reads: " (C) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that: 1. The change in use or renovation does not increase the floor area of the structure." The request is to allow a nonconforming structure to be both renovated and expanded.

The third is a variance to section 153.222(D); *Location of Expansions to Nonconforming Structures*, which reads: "A nonconforming structure may be expanded, without bring the nonconforming structure into conformity with these regulations, only if part of the structure to be expanded and the area of the lot into which the expansion is taking place are brought into conformity with the requirements of these regulations." The request is to allow a portion of a building expansion to a nonconforming structure to be built without bringing that area of the structure into conformity with the regulations.

There was some discussion of the site plan as included in the agenda packet with Mr. King pointing out the various rights of way and setback lines.

Applicant Adnan Jazairi and agent Dean Privette, PE addressed the Board. Mr. Prevette explained that the owners want to expand the footprint of the store to make it more economically viable. With the requirements of the various zoning requirements, they looked at a number of different scenarios, including tearing the original structure down and rebuilding to try to come into complete compliance, but the buildable footprint would be only about ten feet wide. They did look at several alternative scenarios but this plan is the only practical way to accomplish it.

Vice Chairman Lee asked about the extent the exterior renovations. Mr. Privette explained they have had those discussions with the Board of Commissioners. The addition will match the existing structure which will also match the surrounding Windsor Square development. It will be brick with lighted sconces and faux windows. The Commissioners asked for mullions in the faux windows and those will be included as well. There will be more of a residential than commercial look from the street side. The Board of Commissioners said the proposed changes are satisfactory.

Chairman Welsh asked about the canopy. Mr. Prevette discussed the location of the existing canopy, which covers the entire building and the two gasoline dispensers on either side. They propose to extend the canopy laterally to allow for the move of the fuel islands that are closest to the building now and move them to the other side of the other existing fuel islands. Everything is shifting parallel to Independence Boulevard rather than encroaching any further closer to the transitional right of way. Some parking had originally been shown in the transitional right of way and that too was relocated at the request of Town staff. In addition, the existing sign is currently nonconforming and it will be replaced with a conforming monument sign. They are trying to comply with as much as possible.

## **DELIBERATIONS**

Vice Chairman Lee said the Board very recently granted similar variances for a similar situation so it would be consistent. In addition, it seems that the variances would not cause any undue burden or substantial change on the surrounding area since the changes are all parallel to 74. Chairman Welsh said the plan sounds pretty well thought out and he did not hear evidence of any problems that would occur if the variances were granted. Mr. Sumners agreed and added that the new plans call for better utilization of the site. Chairman Welsh noted that the applicant has looked into alternatives and determined they are not viable and that the proposed changes are the best solution.

The Board addressed the first variance to section 153.095: *Requirements for Lots on Thoroughfares*. Vice Chairman Lee made a motion to approve the variance to the existing transitional setbacks per the applicant's provided site plan. Chairman Welsh seconded and the motion was unanimously approved.

Regarding the second variance to section 153.222(C)(1); *Renovation and Expansion of Nonconforming Structures Prohibited*, Vice Chairman Lee made a motion to approve the variance to allow the applicant to expand the existing nonconforming structure per the applicant's provided site plan. Chairman Welsh seconded and the motion was unanimously approved.

Regarding the final variance to section 153.222(D); *Location of Expansions to Nonconforming Structure*, Vice Chairman Lee made a motion to approve the variance to allow the structure to be expanded without bringing the nonconformity into compliance, per the applicant's provided site plan. Chairman Welsh seconded and the motion was unanimously approved.

Vice Chairman Lee read the findings of fact for all three variances. If the applicant complies with the provisions of the ordinance, he cannot secure a reasonable return based on the testimony that these changes must be done to keep the project economically viable. The hardship of which the applicant complains does result from unique circumstances related to the land since the property is affected by but predates the transitional setback requirements. The variances will be in harmony with the general purpose and intent of the ordinance and will provide general improvements to that facility. The variances will secure the public safety and will do substantial justice. This is a typical variance granted for relief of the transportation planning setbacks. Chairman Welsh added that the Board heard testimony that the applicant examined multiple alternatives, including tearing down the existing structure to try to make it completely conforming, but those were determined to be not viable options.

## **ADJOURNMENT**

Mr. Sumners made a motion to adjourn. Chairman Welsh seconded and the motion was unanimously approved. The meeting adjourned at 7:46 pm.

Respectfully submitted,

Lori Canapinno  
Zoning Technician/Deputy Town Clerk